

NOV 22 2019

[Signature]
MITCHELL R. ELFERS
 CLERK OF COURT

UNITED STATES DISTRICT COURT
 for the
 District of New Mexico

Las Cruces Division

Thomas Hare

Case No.

19 CV-1091

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Ben Baur, Chief Public Defender, State of New Mexico Law Offices of the Public Defender; Jennifer Birmingham, an individual; James Walker, an individual; and Michelle Haley, an individual

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR EMPLOYMENT DISCRIMINATION**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Thomas Hare
Street Address	P.O. Box 14118
City and County	Las Cruces
State and Zip Code	New Mexico 88013
Telephone Number	406-489-1529
E-mail Address	thomasehare@yahoo.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

Defendant No. 1

Name	Ben Baur, Chief Public Defender
Job or Title (<i>if known</i>)	State of New Mexico Law Offices of the Public Defender (LOPD)
Street Address	301 N. Guadalupe Street, Suite 101
City and County	Santa Fe, Santa Fe County
State and Zip Code	NM 87501
Telephone Number	(505) 500-6486
E-mail Address (<i>if known</i>)	

Defendant No. 2

Name	Jennifer Birmingham
Job or Title (<i>if known</i>)	in her individual capacity
Street Address	301 N. Guadalupe Street, Suite 101
City and County	Santa Fe, Santa Fe County
State and Zip Code	NM 87501
Telephone Number	505-500-6486
E-mail Address (<i>if known</i>)	

Defendant No. 3

Name	James Walker
Job or Title (<i>if known</i>)	in his individual capacity
Street Address	2395 N. Florida
City and County	Alamogordo, Otero County
State and Zip Code	NM 88310
Telephone Number	575-551-7209
E-mail Address (<i>if known</i>)	

Defendant No. 4

Name	Michelle Haley
Job or Title (<i>if known</i>)	in her individual capacity
Street Address	2395 N. Florida
City and County	Alamogordo, Otero County
State and Zip Code	NM 88310
Telephone Number	575-551-7209
E-mail Address (<i>if known</i>)	

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is

Name	State of New Mexico Law Offices of the Public Defender
Street Address	2395 N. Florida
City and County	Alamogordo, Otero County
State and Zip Code	NM 88310
Telephone Number	(575) 551-7209

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to (*check all that apply*):

- Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

- Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- Other federal law (*specify the federal law*):

42 U.S.C. § 1981

- Relevant state law (*specify, if known*):

NMSA 1978 §§ 30-13-3, 41-4-1 to 41-4-30 and 41-7-1 to 41-7-6.

- Relevant city or county law (*specify, if known*):

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes (*check all that apply*):

- Failure to hire me.
- Termination of my employment.
- Failure to promote me.
- Failure to accommodate my disability.
- Unequal terms and conditions of my employment.
- Retaliation.
- Other acts (*specify*): Attempts to blacklist/defame me in violation of state law.

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

Failure to hire - 07/2018; Retaliation & Attempts to Blacklist/Defame - 07/2018 and 09/21/2018.

C. I believe that defendant(s) (*check one*):

- is/are still committing these acts against me.
- is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (*check all that apply and explain*):

- race _____
- color _____
- gender/sex _____
- religion _____
- national origin _____
- age (*year of birth*) _____ (*only when asserting a claim of age discrimination*.)
 disability or perceived disability (*specify disability*)

E. The facts of my case are as follows. Attach additional pages if needed.

Defendants are engaging in a pattern of retaliation, defamation and blacklisting efforts against me because of my prior EEOC activity. In 2018, I applied for jobs with the LOPD but was not hired. In September 2018, Jennifer Birmingham, the LOPD Deputy Chief Public Defender, conspired with James Walker and Michelle Haley, both of whom are employees in the LOPD Alamogordo Office, to develop a false story about me presenting a danger to the LOPD and its employees. Ms. Birmingham subsequently contacted Gerald Byers, the Chief Deputy District Attorney in Las Cruces where I was employed, and communicated this false story to him. (Continued on additional page).

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*

March 6, 2019

- B. The Equal Employment Opportunity Commission *(check one):*

has not issued a Notice of Right to Sue letter.

issued a Notice of Right to Sue letter, which I received on *(date)* 09/16/2019.

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one):*

60 days or more have elapsed.

less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I seek actual damages for lost wages in the amount of \$375,000, lost annual and sick leave benefits in the amount of \$32,262, lost pension benefits in the amount of \$65,625, and losses from my Individual Retirement Account (IRA) in the amount of \$70,000. I seek relief for compensatory damages in the amount of \$5,000,000 for mental anguish, loss of enjoyment of life, inconvenience and loss of opportunity for advancement, including promotions to LOPD management. I seek punitive damages in the amount of \$5,000,000 based on the pattern of retaliation, defamation and blacklisting efforts with employers in the state of New Mexico that Defendants have engaged in since 2015. (Continued on additional page).

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11/22/2019

Signature of Plaintiff

Printed Name of Plaintiff



Thomas Hare

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

ADDITIONAL PAGE

III. STATEMENT OF CLAIM

E. The facts of the case are as follows. Attach additional pages if needed.

Ms. Birmingham falsely told Mr. Byers that I was in the Otero County District Court because I was charged with a crime in "Magistrate Court". I have never been charged with a crime in New Mexico. In August 2015, Mario Torrez, the LOPD Alamogordo District Defender, admitted that he told a manager at the New Mexico Human Services Department to be wary of hiring me because of my prior EEOC activity, and I was not hired for the position.

V. RELIEF

I also want to be reinstated to employment with the LOPD Alamogordo Office to the permanent, non-probationary rank of Senior Trial Attorney because this is where I would be but for the hostile work environment that the LOPD created as retaliation, which forced me to leave the LOPD in the first place.

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p>	<p>NOTARY – When necessary for State and Local Agency Requirements</p>
<p>I declare under penalty of perjury that the above is true and correct.</p>	
<p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT</p>	

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please notify EEOC or the state or local agency where you filed your charge if retaliation is taken against you or others who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against anyone, or for a union to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
El Paso Area Office**

100 N. Stanton St., Suite 600

El Paso, TX 79901-1331

Toll Free: 866-408-8075

Potential Charge Inquiries: 800-669-4000

TTY (915) 534-6710

FAX (915) 534-6701

elpasointake@eeoc.gov

<http://www.eeoc.gov>

Dallas District Office
San Antonio Field Office
El Paso Area Office

**Thomas Hare
P.O. Box 14118
Las Cruces, NM 88013**

Re: Charge No. 453-2019-00647

Respondent: State of New Mexico Law Offices of the Public Defender

Dear Mr. Hare:

Thank you for the additional information you submitted in response to our preliminary assessment of the evidence. We want to assure you that all the evidence submitted by you and the employer has been considered in our review of your case.

After review of the additional information you provided, it is our assessment that further investigation is unlikely to result in a violation of the statutes we enforce. While we realize that you have firm views that the evidence you submitted supports your position that you were discriminated against, the final determination must comport with our interpretation of the available evidence and the laws that we enforce.

Therefore, please find enclosed the Dismissal and Notice of Rights that represents a final determination by the U.S. Equal Employment Opportunity Commission (EEOC) and describes your right to pursue the matter by filing a lawsuit within ninety (90) days of your receipt of the notice. If you fail to file a lawsuit within the statutory ninety-day period, your right to sue in federal court will expire and cannot be restored by EEOC. Additionally, you may wish to consult with your attorney reference the circumstances of your case and the likelihood of prevailing in any litigation you might want to initiate.

We hope this information is helpful to you.

Sincerely,

Jessie E. Moreno
EEOC Investigator

SEP 12 2019

Date

Encl.: Dismissal and Notice of Rights (EEOC Form 161)

Cc:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Thomas Hare
P.O. Box 14118
Las Cruces, NM 88013

From: El Paso Area Office
100 N. Stanton St.
6th Floor, Suite 600
El Paso, TX 79901



*On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

453-2019-00647

Jessie E. Moreno,
Investigator

(915) 534-4528

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -*(See the additional information attached to this form.)*

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

Enclosures(s)

On behalf of the Commission

 Lucy V. Orta,
 Area Office Director

SEP 12 2019

(Date Mailed)

cc:

Ronald Herrera
Human Resources Director
State of New Mexico
Law Offices of the Public Defender
301 N. Guadalupe St., Ste. 101
Santa Fe, NM 87501

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

U.S. EQUAL OPPORTUNITY COMMISSION

EL PASO AREA OFFICE

100 N. STANTON ST. FL 6

EL PASO, TX 79901-1433

AN EQUAL OPPORTUNITY EMPLOYER

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PENALTY FOR PRIVATE USE \$300

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TX 79901
13 SEP 2019

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ZIP 79901 \$ 000.50⁰

02 4W

000361640 SEP 12 2019

Thomas Hare
P.O. Box 14118
Las Cruces, NM 88013

From:

*Received
9/16/2019
S. Hare*

88043-441618